

Message Text

SECRET

PAGE 01 MANILA 04725 240943Z
ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
-----117432 240946Z /10

O 240905Z MAR 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC IMMEDIATE 3413
INFO SECDEF WASHDC
JCS
CINCPAC
CINCPACAF
CINCPACREPPHIL
13TH AF CLARK AB
CINCPACFLT PEARL HARBOR HI

S E C R E T MANILA 4725

EXDIS

MILITARY ADDRESSEES HANDLE AS SPECAT EXCLUSIVE

E.O. 11652: GDS
TAGS: MARR, RP
SUBJECT: PHILIPPINE BASE NEGOTIATIONS - CRIMINAL JURISDICTION

REF: MANILA 4723

1. ON MARCH 24 PRESIDENT MARCOS RAISED WITH AMBASSADOR
THE JAPANESE CRIMINAL JURISDICTION FORMULA WITH IMPLICATION
THAT IT MIGHT BE ADAPTABLE HERE. AS EMBASSY UNDERSTANDS
IT, AGREED MINUTE TO ARTICLE XVII OF JAPANESE SOFA PROVIDES
THAT OFFICIAL DUTY CERTIFICATE SHALL, IN ANY JUDICIAL
PROCEEDINGS, BE SUFFICIENT EVIDENCE OF THE FACT UNLESS THE
CONTRARY IS PROVED. HOWEVER, JOINT COMMITTEE AGREED VIEW
#43 PROVIDES THAT THE PROOF REFERRED TO IN THE AGREED
MINUTE SHALL BE PRESENTED TO THE JOINT COMMITTEE FOR
CONSIDERATION AND DOES NOT SPECIFY WHAT WILL HAPPEN

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IF THERE IS NO AGREEMENT. EMBASSY FURTHER UNDERSTANDS
THAT EXPERIENCE IN JAPAN, AS ELSEWHERE, IS THAT IN
ALMOST EVERY CASE THE HOST GOVERNMENT EVENTUALLY ACQUIESCES
IN OUR ASSERTION AND USUALLY WITHOUT UNDUE DIFFICULTY.

2. EXPERIENCE HERE REVEALS A FUNDAMENTAL DIFFERENCE
AS TO THE APPLICABILITY OF THE OFFICIAL DUTY CONCEPT

WITH THE PHILS TAKING UNREALISTIC POSITION THAT THE US HAS PRIMARY JURISDICTION ONLY OVER THOSE CRIMINAL ACTS WHICH WERE REQUIRED OR AUTHORIZED TO BE DONE BY A SPECIFIC MILITARY DUTY. THIS POSITION IN EFFECT NULLIFIES THE OFFICIAL DUTY CONCEPT AS NO OFFENSES ARE AUTHORIZED OR REQUIRED BY DUTY. THUS, THERE IS UNDERSTANDABLE DOUBT THAT A JOINT RP-US BODY COULD EVER REACH AGREEMENT ON A PARTICULAR OFFICIAL DUTY CASE UNDER THE PREVAILING PHILIPPINE VIEW ON WHAT CONSTITUTES OFFICIAL DUTY.

3. A POSSIBLE COURSE OF ACTION WOULD BE TO FOLLOW UP ON MARCOS' REMARKS ABOUT "SIDE AGREEMENT" AND PROPOSE THAT DISPUTED OFFICIAL DUTY CASES COULD BE REFERRED TO A JOINT COMMITTEE. A SEPARATE AGREEMENT, POSSIBLY CLASSIFIED WOULD PROVIDE FOR U.S. A DETERMINATION TO PREVAIL SHOULD NO AGREEMENT BE REACHED WITHIN LIMITED PERIOD OF TIME. AN ARRANGEMENT OF THIS SORT WOULD IMPROVE THE PRESENT SITUATION BY ESTABLISHING A DEFINITE TIME LIMIT AFTER WHICH US WOULD CLEARLY HAVE RIGHT TO ACT. AT PRESENT, CONSULTATIONS DO NOT HAVE SUCH A LIMIT AND US ACTION IS USUALLY POSTPONED, AS DISPLAY OF GOOD FAITH, DURING PROTRACTED DISCUSSIONS WHICH EVENTUALLY TRAIL OFF WITHOUT AGREEMENT EVER BEING REACHED.

4. ACTION REQUESTED:

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COMMENTS AND GUIDANCE ON RESPONSE TO PRESIDENT MARCOS.
NEWSOM

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NNN

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